

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

GRAIN CRAFT, INC.¹

Employer

and

Case 27-RC-273789

**BAKERY CONFECTIONERY TOBACCO
WORKERS & GRAIN MILLERS
INTERNATIONAL UNION, AFL-CIO, CLC**

Petitioner

DECISION AND DIRECTION OF ELECTION

Grain Craft, Inc. (Employer) operates a flour mill in Ogden, Utah. Petitioner, Bakery Confectionery Tobacco Workers & Grain Millers International Union, AFL-CIO, CLC (Petitioner) seeks to represent a bargaining unit of approximately 32 employees employed at the Ogden facility.

A hearing was held before a hearing officer of the National Labor Relations Board (Board) on March 29, 2021.² The appropriateness of the bargaining unit is not in dispute, but at hearing the parties were allowed to present their position on the method of election, and specifically whether the election should be held manually at the Employer's facility or by mail ballot, given the ongoing COVID-19 pandemic. Petitioner seeks a mail-ballot election, the Employer seeks a manual election.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the National Labor Relations Act (Act). Applying the Board's recent *Aspirus Keweenaw*³ decision to the circumstances in the instant case, I shall direct a mail-ballot election.

THE EMPLOYER'S OPERATIONS

The Ogden mill is located in Weber County, Utah. Ogden is the largest city in Weber county and is about 511 miles from the Regional office in Denver, Colorado.⁴ Approximately 50 employees work at the facility, of whom Petitioner seeks to represent approximately 32 in a production and maintenance unit consisting of several

¹ The names of the parties appear as amended at hearing.

² All dates 2021 unless otherwise noted.

³ 370 NLRB No. 45 (Nov. 9, 2020).

⁴ In order to conduct a manual election, an agent would be required to fly from Denver to Salt Lake City, Utah and then drive to the Ogden facility.

classifications. As an essential element in the food production supply chain the mill has continued to operate throughout the COVID-19 pandemic.

The mill operates on three shifts, with the first shift scheduled from 7:00 a.m. to 3:00 p.m., the second shift from 3:00 p.m. to 11:00 p.m., and the third shift from 11:00 p.m. to 7:00 a.m. Throughout the year the Employer will have a number of designated “repair days,” when employees are scheduled for a 12-hour shift, with first and second shift working from 7:00 a.m. to 7:00 p.m., and third shift from 7:00 p.m. to 7:00 a.m. On repair days employees focus on maintenance and repair of equipment instead of their normal production duties.

The Employer has taken steps to reduce the risk of COVID-19 transmission among its employees. Employees are encouraged to self-screen for high temperatures and other symptoms typical of COVID-19 prior to work, and once at the mill employees utilize personal protective equipment (PPE), including face shields, gloves, and hand sanitizer. The facility is also cleaned and sanitized each night. The record does not contain information regarding employee vaccination. The Employer did indicate it has not had an employee test positive for COVID-19 since November of 2020.

POSITION OF THE PARTIES

The Employer proposes holding a manual election the week of May 5, with the day of the election designated as a repair day so that the first and second shifts would be working together. Regarding polling periods, the Employer proposes either a single polling period or a multi-session election, with employees specifically released in turn and given a 5 to 10-minute window to vote. Under the Employer’s single session proposal, running from 6:30 a.m. to 2:30 p.m., third shift employees would vote when their shift ended between 6:30 a.m. and 7:30 a.m., and first and second shift employees would vote between 7:30 a.m. and 2:30 p.m. The Employer’s proposal for a multi-session election is essentially the same, but with an additional session between 6:30 p.m. to 7:30 p.m. for any voter previously unable to vote.

Regarding where to hold a manual election, the Employer proposes utilizing a 28 by 56-foot training room at the facility. This room has two doors, one accessing a hallway and one the basement of the facility, so voters can enter and exit through designated doors without congregating. The room itself is large enough for the observers, Board Agent conducting the election, voting station, and ballot box to be separated by six feet. In proposing a manual election, the Employer commits to adjust the polling area on the day of the election, adding items such as plexiglass dividers and tape indicators to direct traffic.

The Employer commits to follow the protocols identified in *Memorandum GC 20-10*, “Suggested Manual Election Protocols,” described below, including providing materials such as hand sanitizer, gloves, sanitizing wipes, disposable pencils, and masks. The Employer also proposes reducing the number of individuals present on the day of the election by having all staff not involved in the election work from home.

In support of its proposal the Employer notes the Board's preference for manual elections, that factors the Board has identified as making a mail-ballot election appropriate are not present, and that its current and proposed safety measures make it entirely possible to hold a safe manual election. The Employer specifically maintains the 7-day positivity rate, as of April 1, for Weber County is 4.72 percent.

Petitioner proposes holding a mail-ballot election given the current COVID-19 pandemic, and particularly the presence of COVID variants, of which at least one has been detected in Weber County. In asserting that a mail-ballot election is the best option in the instant case the Petitioner specifically maintains that, because the Weber County is designated a "moderate" transmission area, under a State of Utah Public Health Order addressing COVID-19 transmission, the 7-day positivity rate is "at least 5.1% and is less than 10%," in addition to other metrics.

METHOD OF ELECTION

A. Board Standard

The COVID-19 pandemic has had a profound impact on daily life in the United States. Because of the risk of infection associated with gatherings and in-person activities, the pandemic has also impacted the way the Board conducts its elections. Many of the measures recommended by the Federal, state, and local governments to prevent the spread of the virus are well-known at this point: avoid social gatherings, avoid discretionary travel, practice good hygiene, maintain at least a 6-foot distance between individuals, and use cloth face coverings when around other people.⁵

Although it has not directly addressed Board elections, the CDC has issued guidance on elections in general. Its *Polling Locations and Voters* guidance states officials should "consider offering alternatives to in-person voting if allowed" and that "[v]oting alternatives that limit the number of people you come in contact with or the amount of time you are in contact with others can help reduce the spread of COVID-19."⁶ The CDC further states the virus can survive for a short period on some surfaces and that it is possible to contract COVID-19 by touching a surface or object that has the virus on it and then touching one's mouth, nose, or eyes," but "it is unlikely to be spread from domestic or international mail, products or packaging."⁷ To avoid the unlikely possibility of contracting COVID-19 through the mail, the CDC simply advises: "After

⁵ CDC, Protect Yourself (updated March 8, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last viewed April 12, 2021).

⁶ CDC, Considerations for Election Polling Locations, (updated January 4, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last viewed April 12, 2021).

⁷ CDC, *Frequently Asked Questions, Am I at risk for COVID-19 from mail, packages, or products?* (updated March 17, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> (last viewed April 12, 2021).

collecting mail from a post office or home mailbox, wash your hands with soap and water for at least 20 seconds or use a hand sanitizer with at least 60% alcohol.”⁸

Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to ensure the fair and free choice of bargaining representatives, and the Board in turn has delegated the discretion to determine the arrangements for an election to Regional Directors. *San Diego Gas and Elec.*, 325 NLRB 1143, 1144 (1998); citing *Halliburton Services*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958); *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). This discretion includes the ability to direct a mail-ballot election where appropriate. *San Diego Gas & Elec.* at 1144-1145. Whatever decision a Regional Director does make should not be overturned unless a clear abuse of discretion is shown. *National Van Lines* at 1346.

The Board's longstanding policy is that elections should, as a rule, be conducted manually. *National Labor Relations Board Casehandling Manual Part Two Representation Proceedings*, Sec. 11301.2.⁹ However, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. *Id.* This includes a few specific situations addressed by the Board, including where voters are “scattered” over a wide geographic area, “scattered” in time due to employee schedules, in strike situations, or other unspecified extraordinary circumstances. *San Diego Gas*, supra at 1145.

After a brief pause in elections early in the pandemic, the Board resumed conducting elections in April, with many Regional Directors, including myself, directing primarily mail-ballot elections in light of the extraordinary circumstances presented by the COVID-19 pandemic. To assist Regional Directors in determining when a manual election could be conducted safely, on July 6, 2020, the General Counsel issued a memorandum titled “Suggested Manual Election Protocols,” *Memorandum GC 20-10*, setting forth detailed suggested manual election protocols.

In *Aspirus Keweenaw*, 370 NLRB No. 45 (Nov. 9, 2020), the Board addressed how Regional Directors should assess the risks associated with the COVID-19 pandemic when considering the appropriate method of election. In doing so, the Board reaffirmed its long-standing policy favoring manual elections and outlined six situations that suggest the propriety of mail ballots due to the COVID-19 pandemic. Specifically, when one or more of the following situations is present, a Regional Director may consider directing a mail-ballot election due to COVID-19 without abusing his or her discretion:

⁸ CDC, *Running Errands* (updated December 31, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html> (last viewed April 12, 2021).

⁹ I note that the provisions of the *Casehandling Manual* are not binding procedural rules: it is issued by the General Counsel of the National Labor Relations Board (General Counsel) and not the Board and is intended to provide guidance to regional personnel in the handling of representations cases. See *Patient Care*, 360 NLRB 637, 638 (2014), citing *Solvent Services*, 313 NLRB 645, 646 (1994).

1. The Agency office tasked with conducting the election is operating under “mandatory telework” status;
2. Either the 14-day trend in number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;
3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;
4. The employer fails or refuses to commit to abide by *GC Memo 20-10*, “Suggested Manual Election Protocols;”
5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status; or
6. Other similarly compelling circumstances.

Id. slip op. at 4-7. The existence of one or more of these situations will normally suggest that a mail ballot is appropriate under the “extraordinary circumstances presented by this pandemic.” *Id.* slip op. at 4. The Regional Director has discretion to conduct an election by mail ballot “under the peculiar conditions of each case.” *Id.* slip op. at 3 (citing *National Van Lines*, 120 NLRB at 1346). The Regional Director’s determination to conduct an election manually or by mail is subject to an abuse of discretion standard. *Aspirus*, 370 NLRB No. 45, slip op. at 3 (citing *San Diego Gas & Electric*, 325 NLRB at 1144 n. 4). Finally, in *Aspirus*, the Board noted that a Regional Director who directs a mail-ballot election under one or more of the foregoing six situations will not have abused her or his discretion. *Aspirus*, 370 NLRB No. 45, slip op. at 8.

Recent developments regarding the pandemic have been both positive and negative. A positive development has been the rapidly expanding nationwide vaccination effort; as of April 12, almost 74 million individuals, or about 22.3 percent of the United States population, have been fully vaccinated.¹⁰ A negative development has been the unfortunate emergence of new variant strains of COVID-19, including the B.1.1.7, B.1.351, and P.1. strains.¹¹ The CDC has stated that these variants, “have mutations in the virus genome that alter the characteristics and cause the virus to act differently in ways that are significant to public health (e.g., causes more severe disease, spreads more easily between humans, requires different treatments, changes the effectiveness of current vaccines).” Initial research suggests, as stated by the CDC, “[t]hese variants seem to spread more easily and quickly than other variants, which may lead to more cases of COVID-19.” The CDC further cautions that we do not yet know how widely these new variants have spread, how the disease caused by these new variants differs from the disease caused by other variants that are currently circulating, and how these variants may affect existing therapies, vaccines, and tests. As of April

¹⁰ <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last viewed April 12, 2021).

¹¹ <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant-cases.html> (last viewed April 12, 2021).

12, the B.1.1.7 and P.1 variants have been confirmed as present in Utah, and Utah is one of only several states with over 250 confirmed cases of the B.1.1.7 variant notwithstanding that it is not as populous as other states with a high number of the variant, such as California and Florida.¹² The B.1.351 variant, while not yet confirmed in Utah, is confirmed as present in the neighboring states of Arizona, Nevada, Idaho, and Colorado.¹³

B. Determination

After careful examination of the record, the parties' respective positions, and the current state of the COVID-19 virus in Utah and Weber County, I have determined that a mail-ballot election is the appropriate option. In reaching this decision, I have applied the six considerations set forth in *Aspirus Keweenaw*, *supra*, to the facts of this case.

Applying these factors, I first note that the Regional office is not currently in mandatory telework status, the first factor. Regarding the third and fourth factors, I find no state, county or local measure regarding maximum gathering size would be implicated by a manual election, and the Employer's commitments regarding precautions for a manual election are generally consistent with *GC Memo 20-10*. Regarding the fifth factor, there is no evidence of an outbreak at the Employer's facility. However, I do find evidence of the second and sixth factors, and accordingly I will direct a mail-ballot election in this matter.

In addressing the second consideration – whether the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher – the Board directs Regional Directors to utilize the data published by Johns Hopkins University & Medicine Coronavirus Resource Center, or from official state or local government sources. Where county level data is not available, the Board directs Regional Directors to look at state level data.

Here, the parties are in dispute regarding the data. The Employer cites to the “transmission index by county” document provided on the Weber-Morgan Health Department website, a consolidated health department of Weber and neighboring Morgan County. This document, dated April 1, reflects a 7-day average percent positive in Weber County of 4.72 percent.¹⁴ However, as noted by Petitioner, the same document identifies the transmission index in Weber County as “moderate,” which correlates to a 7-day average percent positive between 5 and 10 percent.¹⁵ While local data is preferable, I find that ultimately the Weber County data appears to be in conflict or is at least inconsistent. Additionally, because it is not a 14-day average, but a 7-day

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ <http://www.webermorganhealth.org/coronavirus/> (last viewed April 12, 2021). With its Statement of Position, the Employer provided a similar chart dated 3-11-2021, which shows the positivity rate on that date at 3.15% for Weber County (Board Exhibit 4).

¹⁵ <https://coronavirus.utah.gov/utah-health-guidance-levels/> (last viewed April 12, 2021).

average, I note it is not exactly the same data the Board referenced in *Aspirus Keweenaw*.

In light of the above, I find it appropriate to consider the 14-day testing positivity rate published by Johns Hopkins University for Utah as a whole. As of April 12, 2021, the 14-day positivity rate is 6.31 percent in Utah.¹⁶ This is above the 5 percent threshold identified in *Aspirus Keweenaw*, and as such, I find that this factor supports conducting the election by mail.

As to the 14-day trend in the number of new confirmed Covid-19 cases, this measure is used to determine whether pandemic conditions are improving, deteriorating, or remaining stable. The Weber-Morgan Health Department website presents a 14-day case count along with the 14-day case count per 100,000 in its transmission report that is updated weekly. The Employer's Statement of Position, Board Ex. 4 (Exhibit A), includes a copy of the transmission report dated March 11, 2021, showing a 14 day case count of 485 with 189.2 case rate per 100,000:¹⁷

County Name	UPDATED COVID-19 Transm Index	14 Day Case Count	14 Day Case Rate per 100K	7 Day Avg Percent Positives (†tests/tests)
Beaver County	High	55	835.9	17.86%
Box Elder County	Moderate	87	158.3	3.56%
Cache County	Moderate	304	239.2	3.94%
Carbon County	High	100	493.4	10.21%
Daggett County	Low	0	0.0	0.00%
Davis County	Moderate	847	240.8	4.54%
Duchesne County	Moderate	24	120.2	4.74%
Emery County	High	53	529.3	9.65%
Garfield County	High	39	767.7	9.92%
Grand County	Moderate	28	286.8	2.14%
Iron County	Moderate	147	278.5	6.07%
Juab County	Moderate	28	242.3	3.80%
Kane County	High	66	856.1	8.55%
Millard County	Moderate	17	130.7	4.62%
Morgan County	Moderate	17	141.1	3.68%
Piute County	Low	0	0.0	0.00%
Rich County	Low	12	487.0	6.25%
Salt Lake County	Moderate	2,666	231.3	4.01%
San Juan County	Moderate	21	135.9	4.10%
Sanpete County	Moderate	78	254.7	4.22%
Sevier County	Moderate	64	297.1	7.05%
Summit County	High	147	350.6	3.37%
Tooele County	Moderate	152	217.4	4.87%
Uintah County	High	158	445.8	12.27%
Utah County	Moderate	1,631	262.1	4.79%
Wasatch County	Moderate	79	237.7	5.11%
Washington County	Moderate	376	219.0	4.54%
Wayne County	Low	0	0.0	3.23%
Weber County	Moderate	485	189.2	3.15%

¹⁶ <https://coronavirus.jhu.edu/testing/testing-positivity> (last viewed April 12, 2021).

¹⁷ The Weber-Morgan Health Department transmission reports shown in this decision have been redacted to remove the caption and the last two columns captioned "Statewide ICU Utilization (7 day avg)" and "Statewide ICU COVID Utilization (7 day avg)" as they are not relevant to the decision.

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Below is the chart for March 25, 2021:

County Name	UPDATED COVID-19 Transm Index	14 Day Case Count	14 Day Case Rate per 100K	7 Day Avg Percent Positives (+tests/tests)
Beaver County	High	31	471.1	15.00%
Box Elder County	Moderate	95	172.9	2.99%
Cache County	Moderate	290	228.2	3.34%
Carbon County	Moderate	45	222.0	5.58%
Daggett County	Low	1	102.0	2.33%
Davis County	Moderate	684	194.5	4.09%
Duchesne County	Moderate	22	110.2	3.64%
Emery County	High	57	569.2	15.33%
Garfield County	Moderate	16	315.0	9.92%
Grand County	Moderate	31	317.5	7.43%
Iron County	Moderate	124	235.0	2.58%
Juab County	Moderate	20	173.1	6.32%
Kane County	Moderate	23	298.4	7.14%
Millard County	Moderate	25	192.2	9.52%
Morgan County	Moderate	17	141.1	3.70%
Plute County	Low	2	138.4	11.11%
Rich County	Low	3	121.8	9.09%
Salt Lake County	Moderate	2,227	193.2	3.75%
San Juan County	Moderate	24	155.3	0.95%
Sanpete County	Moderate	73	238.4	3.99%
Sevier County	Moderate	54	250.7	5.77%
Summit County	Moderate	161	383.9	4.68%
Tooele County	Moderate	192	274.7	5.27%
Uintah County	Moderate	115	324.5	6.54%
Utah County	Moderate	1,272	204.4	4.54%
Wasatch County	Moderate	57	171.5	4.02%
Washington County	Moderate	260	151.4	3.33%
Wayne County	Low	3	111.5	3.70%
Weber County	Moderate	454	177.1	3.87%

Below is the chart for April 1, 2021:

County Name	Updated Local Copy of Transmission Index	14 Day Case Count (excluding prisoners)	14 Day Case Rate per 100K (excluding prisoners)	7 Day Avg Percent Positives (+tests/tests)
Beaver County	Moderate	21	312.97	3.30%
Box Elder County	Moderate	89	158.80	2.53%
Cache County	Moderate	224	174.61	2.57%
Carbon County	Moderate	31	151.49	4.88%
Daggett County	Low	1	105.26	0.00%
Davis County	Moderate	588	165.41	3.09%
Duchesne County	Moderate	30	150.47	4.59%
Emery County	Moderate	29	289.65	18.06%
Garfield County	Low	14	277.17	3.09%
Grand County	Moderate	26	266.56	3.92%
Iron County	Moderate	129	235.23	3.02%
Juab County	Low	14	116.50	1.61%
Kane County	Moderate	23	291.66	4.72%
Millard County	Moderate	29	219.90	4.40%
Morgan County	Moderate	41	338.17	4.39%
Plute County	Low	1	67.61	0.00%
Rich County	Low	5	201.37	1.54%
Salt Lake County	Moderate	2,099	180.88	3.30%
San Juan County	Moderate	27	176.38	2.08%
Sanpete County	Moderate	59	180.70	2.76%
Sevier County	Moderate	45	208.14	3.66%
Summit County	Moderate	170	403.37	4.05%
Tooele County	Moderate	160	221.43	4.35%
Uintah County	Moderate	57	159.51	4.45%
Utah County	Moderate	1,115	175.25	3.73%
Wasatch County	Moderate	61	178.93	3.15%
Washington County	Moderate	208	117.15	3.96%
Wayne County	Low	2	73.77	4.00%
Weber County	Moderate	514	197.53	4.72%

Below is the chart for April 8, 2021:

County Name	UPDATED COVID-19 Transmission Index	14 Day Case Count	14 Day Case Rate per 100k	7 Day Avg Percent Positives (4tests/tests)
Beaver County	Moderate	21	313.0	16.39%
Box Elder County	Moderate	81	144.3	5.33%
Cache County	Moderate	199	155.1	2.49%
Carbon County	Moderate	36	175.9	7.41%
Degett County	Low	0	0.0	0.00%
DeVos County	Moderate	638	179.3	4.15%
Duchesne County	Moderate	32	160.3	5.50%
Emery County	Low	13	129.8	3.26%
Garfield County	Low	4	79.2	0.00%
Grand County	Moderate	36	369.1	9.35%
Iron County	Moderate	165	300.2	4.10%
Juab County	Low	6	49.9	0.67%
Kane County	Moderate	19	240.9	7.79%
Millard County	Moderate	15	113.7	5.33%
Morgan County	Moderate	37	470.1	9.40%
Plute County	Low	1	67.6	0.00%
Rich County	Low	2	80.5	6.67%
Salt Lake County	Moderate	2,064	177.9	3.58%
San Juan County	Low	10	65.3	2.30%
Sanpete County	Low	31	100.2	3.05%
Sevier County	Moderate	33	152.6	4.07%
Summit County	Moderate	132	313.2	3.35%
Tooele County	Moderate	125	173.0	4.11%
Uintah County	Moderate	51	142.7	4.98%
Utah County	Moderate	1,020	160.3	3.05%
Wasatch County	Moderate	75	220.0	4.45%
Washington County	Moderate	186	104.8	2.75%
Wayne County	Low	1	36.9	0.00%
Weber County	Moderate	605	232.5	4.89%

The March 25, 2021 chart lists a 14-day case count of 454 with a 177.1 case rate per 100,000 individuals. A single chart does not indicate whether the statistics are worsening over time in the County, as would be apparent with a line graph. The April 1, 2021 chart, also referenced by the Employer in its brief for the 7-day positivity rate, shows a 14-day case count of 514 with a 197.53 case rate per 100,000. The April 8, 2021 published chart shows a 14-day case count of 605 with a 232.5 case rate per 100,000. Thus, between March 25, 2021 and April 8, 2021 the COVID-19 cases rose rather than remained stable; as such, this factor supports conducting the election by mail ballot.

I additionally find the sixth consideration - whether other compelling circumstances exist - also weighs in favor of a mail-ballot election in this case. Specifically, the presence of emerging variants in Utah, and at least one in Weber County specifically, which may pose a greater risk of transmission and serious complications, present such a compelling circumstance. Because the discovery of the variants followed the Board's November 2020 Decision in *Aspirus Keweenaw*, and as such was not considered by the Board in that Decision, I find the variants constitute a compelling circumstance that is sufficient to support conducting an election by mail. I recognize the risk posed by variants is somewhat mitigated by the increasing reach of vaccination efforts, also subsequent to *Aspirus Keweenaw*, but in this case the record contains no information about vaccination among the employees. Statewide, approximately 679,331 people have been fully vaccinated,¹⁸ which is about 20.1% of the state's population.¹⁹ In Weber-Morgan counties, 54,510 of approximately 272,337

¹⁸ <https://coronavirus-dashboard.utah.gov/vaccines.html> (last viewed April 12, 2021).

¹⁹ <https://www.census.gov/quickfacts/UT> (last viewed April 12, 2021).

individuals²⁰ have been fully vaccinated, which is about a 20% vaccination rate. While progress is being made, the vaccination rate still must be much higher to reach the goal of substantial immunity in the community - assuming at present that the current vaccinations will be effective against the variants that are now emerging.

For the reasons stated above, I find a mail-ballot election is appropriate at this time under the extraordinary circumstances presented by this pandemic, and I have directed an election accordingly.

CONCLUSIONS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²¹
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time production and maintenance employees employed by the Employer at its Ogden, Utah facility;

Excluded: All office clerical employees, managers, guards, and supervisors, as defined in the Act.

²⁰ <https://www.census.gov/quickfacts/fact/table/morgancountyutah,webercountyutah/PST045219> (last viewed April 12, 2021). The State of Utah often combines the counties of Weber and Morgan for statistical purposes, Weber County has a much larger population, at about 260,213, than Morgan County, which has a population of about 12,124.

²¹ During the hearing the parties stipulated to the following commerce facts:

The Employer, Grain Craft, Inc., a Georgia corporation, is a flour miller with facilities across the nation, including Ogden, Utah, the only facility involved herein. During the last calendar year, a representative period, the Employer purchased and received goods or services valued in excess of \$50,000 directly from suppliers located outside the State of Utah.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **BAKERY CONFECTIONERY TOBACCO WORKERS & GRAIN MILLERS INTERNATIONAL UNION, AFL-CIO, CLC.**

A. Election Details

I have determined that a mail-ballot election will be held.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At **3 p.m. (MDT) on Thursday, April 29, 2021**, ballots will be mailed by an agent of Region 27 of the National Labor Relations Board. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Thursday, May 6, 2021, should communicate immediately with the National Labor Relations Board by either calling the Region 27 Office at **(303) 844-3551** or our national toll-free line at **1-866-667- NLRB (1-866-667-6572)**.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 27 office by **3:00 p.m. (MDT) on Tuesday, May 25, 2021. All ballots will be commingled and counted by an agent of Region 27 of the National Labor Relations Board at 3:00 p.m. (MDT) on Tuesday, May 25, 2021**, during a videoconference to be arranged by the Region. In order to be valid and counted, the returned ballots must be received at the Regional Office prior to the counting of the ballots.

A meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **April 4, 2021**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to

vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Thursday, April 15, 2021**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10

business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated at Denver, Colorado on the 13th day of April 2021.

/s/ Paula Sawyer

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